Supreme Court, U.S.
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No. 99-1190

IN THE

Supreme Court of the United States

LEE BACA, Sheriff of the County of Los Angeles and successor in office to Sherman Block,

Petitioner,

v.

BEN LEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the California Court of Appeal erred as a matter of law when it determined that under California law, judgment for possession rendered in an unlawful detainer action extinguishes whatever legal or equitable interest the residential tenant might have had in that property and therefore a post-judgment bankruptcy filing by the tenant does not affect a landlord's right to regain possession of his own property.

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INTRODUCTION

In brief, respondents' position as to the effect of Bankruptcy's Automatic Stay on the eviction of persons found guilty of unlawful detainer *in California* and the constitutionality of CAL. CODE CIV. PROC. § 715.050 is as follows:

1. In order for Bankruptcy's Automatic Stay to have any effect on a Debtor's eviction from real property in California, a Bankruptcy Court must be able to find under California state law the Debtor *to have* a legal, equitable or possessory right in such real property;

2. In order for a person to be judicially determined to be guilty of unlawful detainer of real property in California, under state law the person must be found *not to have* any legal, equitable or possessory right in such real property;

3. A Bankruptcy Court, as a matter of law, cannot ignore such judicial determination about the person-turned-Debtor to find the Debtor to have a legal, equitable or possessory right in such real property;

4. Since a Bankruptcy Court cannot find the Debtor to have any legal, equitable or possessory right in such real property as to which the Debtor has been found guilty of unlawful detainer under California state law, Bankruptcy's Automatic Stay cannot have any effect on the eviction of such Debtor from such real property;

5. Therefore, CAL. CODE CIV. PROC. § 715.050, which commands the eviction of such Debtor found guilty of unlawful detainer notwithstanding receipt of notice of the

Debtor's filing of a Bankruptcy proceeding, does not conflict with Bankruptcy's Automatic Stay and is constitutional.

STATEMENT OF THE CASE

The lower court proceeding out of which this petition arises is entitled *Ben Lee, et al. v. Sherman Block, Sheriff of Los Angeles County*, and was heard in the Superior Court of the County of Los Angeles, Case Number BC197745.

Prior to May 20, 1998, CARLOS NAVARRO and ALMA RODRIGUEZ ("tenants") were tenants of the residential rental property located at 2414 Ridgewood, #2, West Covina, California ("premises") under a rental agreement ("agreement") made with Lee as the landlord.

Prior to May 20, 1998, tenants failed and refused to pay the rent due to Lee for the premises as called for in the agreement.

On May 20, 1998, Lee caused tenants to be served with a notice to pay rent or quit, demanding that tenants either pay the rent then due to Lee or quit and deliver up possession of the premises to Lee within three days ("notice").

Tenants failed and refused to pay the rent due to Lee for the premises or to deliver up possession of the premises to Lee within three days, either as required by the notice or at all, and therefore tenants were unlawfully detaining the premises from Lee. Based on tenants' default in the payment of rent and failure to quit and deliver up possession of the premises, Lee filed West Covina Municipal Court Case No. 98 U 1388 ("case") against tenants for unlawful detainer of the premises.

On June 25, 1998, Lee was awarded judgment in the case for unlawful detainer of the premises against tenants, *declaring that Lee had the right to recover possession of the premises from tenants.*

On July 8, 1998, a Writ of Possession Real Property ("writ"), *commanding the petitioner to place Lee in peaceful possession of the premises*, was issued by the Municipal Court.

On July 9, 1998, Lee caused the writ to be delivered to the petitioner along with payment of the required fees and charges and written instructions requesting the petitioner enforce the writ according to its terms and put Lee in peaceful possession of the premises. The petitioner scheduled enforcement of the writ (physical eviction of real parties) for July 22, 1998, and sent Lee a "Notice of Enforcement of Eviction."

On July 17, 1998, tenants filed a Voluntary Petition in Bankruptcy, Proceeding No. LA 98 38700 SB ("bankruptcy") and notified the petitioner of the bankruptcy filing. The petitioner advised Lee of the receipt of such notification *and refused to enforce the writ* on July 22, 1998, notwithstanding the provisions of CAL. CODE CIV. PROC. § 715.050.

11 U.S.C. § 362(a) provides for an Automatic Stay of the enforcement of certain judgments upon the filing of a bankruptcy petition. Due to this Automatic Stay, as a practice, the petitioner has refused to enforce valid writs of possession until a rental property owner has received relief from the Automatic Stay from the Bankruptcy Court.

In response to the overwhelming problems of owners faced with the time and expense of dealing with fake Bankruptcy petitions, the State of California adopted Senate Bill 690 ("SB 690") enacting CAL. CODE CIV. PROC. § 715.050, which provides, in part:

> Except with respect to enforcement of a judgment for money, a writ of possession issued pursuant to a judgment for possession in an unlawful detainer action shall be enforced pursuant to this chapter without delay, *notwithstanding receipt of notice of the filing by the defendant of a bankruptcy proceeding*. (Emphasis added.)

In adopting SB 690, the Legislature found and declared as follows:

> (a) The landlord-tenant relationship is unique. Rent may not be accepted by the owner during the pendency of an unlawful detainer action without a potential waiver of all of the owner's rights under an eviction notice. Moreover, during the pendency of unlawful detainer proceedings (1) owners are not allowed to eliminate any services provided to the tenant with the intent to cause the tenant to vacate the premises, (2) owners are not excused from making continuing real property tax, mortgage, mortgage interest, utility, insurance or maintenance payments for the premises, and (3) owners are not allowed to retake possession by self-help.
>
> (b) Millions of dollars are lost by owners of residential rental property on a recurring annual

> basis and added to the rent of rent-paying tenants as a result of uncollected unlawful detainer judgments and the delays inherent in the state's unlawful detainer system.
>
> (c) Approximately 220,000 unlawful detainer cases are filed annually in the state, involving less than 5 percent of the state's rental units, costing millions of dollars in attorneys' fees and court costs, unnecessarily burdening court administration and taxpayers.

West's Annotated California Code, Code of Civil Procedure, § 1167.3, History and Statutory Notes.

On September 18, 1998 respondents filed a Petition for Writ of Mandate and Complaint for Declaratory Relief, Permanent Injunction and Damages seeking an order compelling the petitioner to carry out its ministerial duty and enforce the writ of possession.

On October 23, 1998 petitioner filed a Demurrer to respondents' Petition for Writ of Mandate and Complaint for Declaratory Relief, Permanent Injunction and Damages.

The hearing on the demurrer was heard on November 17, 1998, by the Honorable Joseph R. Kalin, who sustained the demurrer without leave to amend and dismissed the action.

Respondents filed a Notice of Appeal from the judgment on December 17, 1998.

Both sides submitted briefs and presented oral argument before Division One of the Second Appellate District, California Court of Appeal. Oral argument was heard on July 28, 1999.

On July 29, 1999, Justice Vogel delivered a unanimous published decision which held that an unlawful detainer judgment extinguishes a residential tenant's interest in the property, both legal and equitable, and that a post-judgment bankruptcy filing does not affect the landlord's right to regain possession of his property, because at that time the landlord's property is not part of the tenant/debtor's estate.

Petitioner sought review of this decision, filing a Petition for Review with the California Supreme Court. Review was denied by that Court on October 20, 1999. The California Supreme Court did not disturb the published opinion of the Appellate Court.

REASONS FOR DENYING THE WRIT

I.

A BANKRUPTCY FILING DOES NOT AUTOMATICALLY STAY THE ENFORCEMENT OF A WRIT.

Despite the argument of petitioner, this case does not present a question of federal preemption, because under bankruptcy law the issue of whether a debtor has any legal or equitable property interest in the rental unit is determined by state law.

"The Court determines the rights of the Debtor under the lease by looking to state law." (Emphasis added.) *In re 163rd Street Medical Corp.*, 67 Bankr. 499, 500 (S.D. Fla. 1986).

A bankruptcy court must look to state law to determine what "legal or equitable interest" a debtor had at the commencement of the bankruptcy. *Butner v. United States*, 440 U.S. 48 (1979); *In re Farmers Markets, Inc.*, 792 F.2d 1400 (9th Cir. 1986); and *In re Schewe*, 94 Bankr. 938 (Bankr. W.D. Mich. 1989).

It is state law that determines whether the debtor's interest in any particular item of property is sufficient to confer a property right on the Bankruptcy estate. *In re Frederes*, 141 B.R. 289 (Bankr. W.D.N.Y. 1992).

Therefore, although Federal law will determine whether any interest claimed by a debtor is the "property of" the Bankruptcy estate, the Bankruptcy Courts must look to State law to make the determination if the debtor has any legal or equitable interest in any property as of the filing of a Bankruptcy Petition. *In re McLeon Trucking Co.*, 74 B.R. 820 (Bankr. W.D.N.C. 1987).

CAL. CODE CIV. PROC. § 1161 provides, in part, that:

> A tenant of real property, for a term less than life, or the executor or administrator of his estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer: . . . 2) when he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his

> landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him and if there is a subtenant in actual occupation of the premises, also upon such subtenant.

(Emphasis added.)

"The protections of the automatic stay only enure to the benefit of the Debtor, property of the Debtor, or property of the estate." (Emphasis added.) *In re Torrez*, 132 B.R. 924 (Bankr. E.D. Cal. 1991). "A tenant must at least have an equitable interest in the property." *In re Flexpak*, 49 B.R. 641 (Bankr. S.D.N.Y. 1985).

In *In re Kennedy*, 39 B.R. 995 (Bankr. C.D. Cal. 1984), the court therein held that "principles of federalism" militate in favor of bankruptcy court abstaining from the exercise of jurisdiction relative to a dispute concerning a foreclosure sale on a family home. *Kennedy* at 997. During its discussion of the issues involved, the *Kennedy* court asserted that the prior owner of the property, in bare unlawful possession following the foreclosure sale, does not "retain any property right therein." *Id.*

In construing congressional intent, the court recognized that while a "possessory interest" is a type of "equitable interest," in order for the debtor to have a "possessory interest," the debtor must have more than bare possession; he must have a *right* to possession.

The Court believes that by the use of the term "possessory interest" Congress intended that the debtor have a right to possession. As one bankruptcy court has stated, "the debtor's *de facto* possessory 'interest' which he seeks to protect . . . is really no interest at all. . . . (following termination of lease due to non-payment, debtors have no legal or equitable interest . . .)." *Kennedy* at 997.

These principles were reiterated by the United States Court of Appeals for the Ninth Circuit, in the case of *In re Windmill Farms, Inc.*, 841 F.2d 1467 (1988). That court held that a lease of real property is terminated under California law when the lessor affirms his election to terminate the lease as expressed in a notice to pay rent or quit which the lessor has previously served upon the lessee.

Accordingly, if the lessor properly notifies the lessee of the lessor's intention to terminate the rental agreement through a three-day notice to pay rent or quit, and if the unpaid rent is not paid within the appropriate notice period, and the lessor goes on to affirm his intention to terminate the lease by filing a complaint for unlawful detainer, the rental agreement has been terminated and once the judgment for possession is obtained the lessee retains *no* property interest, legal or equitable, with regard to the real property or the rental agreement.

The court in *Windmill Farms* based its decision upon the terms of the California unlawful detainer law:

> We look to California's unlawful detainer statutes . . . A tenant who is guilty of unlawful detainer cannot possibly have the right to possession of

> the property. He may still be in possession of the property, but his possession is *not rightful*; it is unlawful.

Windmill Farms, 841 F.2d at 1470 (Emphasis added.)

Except by postulating that unlawful possession is equivalent to a possessory interest, there is simply no authority that requires the application of the automatic stay to a tenant wrongfully holding over after a final state court adjudication of unlawful detainer. Because the *Windmill Farms* court clearly held that the unlawfully detaining tenant has no interest in the property under Section 541 of the Bankruptcy Act, the fact of bare possession does not require a stay of enforcement of a nonmonetary writ of possession.

Section 362(c)(1) of the Bankruptcy Act, 11 U.S.C. § 362(c)(1), provides further that "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." Because the tenant who wrongfully holds over following a state court adjudication of unlawful detainer has no property interest in the residence, the provisions of the stay statute do not apply by their express terms.

It was with this background that Bankruptcy Judge Vincent Zurzolo ruled that:

> the Stay does not enjoin a landlord from regaining possession of residential premises from a wrongfully holding over bankruptcy debtor/ tenant, as long as the landlord seeks only to repossess the property and not to enforce any other

> portion of his unlawful detainer judgment against the Debtor and the Bankruptcy Estate, such as collecting money damages.

(Emphasis added.) *In re Sanya Smith*, 105 Bankr. 50, 55 (C.D. Cal. 1989).

And, the above ruling is not confined to one judge upset with the abuses inherent in the unlawful detainer/bankruptcy system. It has been the opinion of other Federal Courts in other circuits and also the independent opinion of the Indiana Appellate Court.

> It is settled law that an unexpired lease that was terminated before the filing of a bankruptcy petition is not property of the estate within the meaning of 11 U.S.C. Section 541 and is neither affected by the Automatic Stay under 11 U.S.C. Section 362(a) nor may be assumed by the Debtor.

(Emphasis added.) *In re Cohoes Industrial Terminal, Inc.*, 62 B.R. 379, 377 (S.D.N.Y. 1986); *In re Scarsdale Tires Inc.*, 47 B.R. 478, 480 (D.C. 1985).

"A lease terminated due to non-payment of rent and under applicable state law is not assumable nor subject to the application of the Automatic Stay Provision of 11 U.S.C. Section 362." (Emphasis added.) *In re 163rd Street Medical Corp.*, 67 B.R. 499, 500 (S.D. Fla. 1986).

See also In re Liberty Tavern Corp., 94 B.R. 812 (S.D.N.Y. 1988); *In re Fidelity American Mortgage Co.*, 19 B.R. 568 (Bankr. E.D. Penn. 1982); *In re Grant Food Products*, 87 B.R. 6 (Bankr. Del. 1988); and *In re Cowboys, Inc.*, 24 B.R. 15 (Bankr. S.D. Fla. 1982).

Nor is this ruling confined to federal courts. Like our Second District Court of Appeal, the Indiana Appellate Court, based on its state law held that "In the present case there is no leasehold interest which the automatic Stay provision could protect at the time of the filing of the bankruptcy petition." (Emphasis added.) *White v. Indiana Realty Associates II*, 530 N.E.2d 326, 327 (Ind. App. 1988).

The enactment of CAL. CODE CIV. PROC. § 715.050 puts to rest any ambiguity which may have existed earlier and makes clear that neither the tenants nor the bankruptcy estate has any interest in the subject premises to which a stay might apply. It is not an issue of preemption or supremacy of law. Rather, it is the State of California making it clear that under California law, when a judgment for possession of real property has been issued by a state court *prior* to the filing of a bankruptcy petition, there is no legal nor equitable interest in the premises retained by the debtor thereafter and there is no property interest to protect in a *subsequent* Bankruptcy proceeding.

II.

THE DECISION OF THE UNITED STATES DISTRICT COURT IN *DI GIORGIO* IS FLAWED AND OF NO VALUE.

The petitioner's brief relies heavily on the reasoning and the conclusion of the United States District Court in the matter of *In re Di Giorgio*, 200 B.R. 664 (C.D. Cal. 1996). While the petitioner does note in passing that the Ninth Circuit Court of Appeals vacated the judgment, declaring the matter had been moot prior to its being heard by the District Court, *In re Di Giorgio*, 134 F.3d 971 (9th Cir. 1998),

he asserts that since the appellate court did not question the district court's reasoning, that reasoning has some value.

The appellate court did not address the legal issues at all. It held that the district court was wrong to address the legal issues, as the matter was moot and there was no authority for the court to do so.

To posit that by not addressing the underlying issue, the appellate court was somehow approving of the reasoning of the district court is the height of legal hubris. Especially as the Sheriff, who took the position in the *Di Giorgio* case that the stay does not apply, knows that the appellate panel expressed serious reservations about the district court's reasoning as it related to the issue of the stay.

That reasoning was extremely flawed. The district court relied, in part, upon CAL. CODE CIV. PROC. § 1006, yet that section confers no rights of any kind on a party in mere possession, especially unlawful possession, vis-à-vis the property owner. Section 1006 simply provides that "Occupancy for any period confers a title sufficient against all except the state and those who have title . . ." This section protects a mere occupant without any title from being ousted by a new trespasser. It grants no rights to a mere occupant vis-à-vis the owner.

This extremely limited right not to be ousted by new trespassers is no right at all as against a rightful holder of title to the property. *Tobin v. Stevens*, 200 Cal. App. 3d 235, 246 Cal. 478 (1988). Therefore, in the context of a tenant who has been declared to be in *wrongful* possession of the leasehold interest of the landlord, following a judgment for unlawful detainer, the tenant may fairly be said to have *no right of possession*.

Indeed, considering the Ninth Circuit's categorical assertion in *Windmill Farms* that an unlawfully detaining tenant has "no right to possession," it is impossible for Section 1006, which itself provides no right of possession in a mere occupant as against the owner, to somehow transform "no right to possession" into a protectible interest.

Moreover, since the purpose of Section 715.050 is to provide that under California law, in the context of a dispute between a landlord and a former tenant, the illegal occupant has no right to possession either legal or equitable, any rights the Section 1006 may have once conferred are no longer available in light of the subsequent enactment of 715.050.

None of the California cases relied on by the District Court evidence any aspect of California law which would convey any rights in rental property, whether legal or equitable, to a tenant against whom a writ of possession has issued. *King v. Goetz*, 70 C 236 (1886), cited by the court, is not on point as it held that a declaration of homestead filed by an owner of property in accordance with statutory law created certain equitable and legal rights in the person so filing.

Bond v. Aickley, 168 C 161 (1914), also cited by the court, involves a dispute between two parties, neither of which could demonstrate better title than that derived by mere possession. How could either of these cases transform what is essentially an illegal act, the unlawful detainer of a rental unit, into an equitable right?

The reasoning of the District Court in *Di Giorgio* should not be relied on by this Court. The weight of California law, as cited above, is that in these circumstances mere possession creates no legal or equitable rights in the possessor.

III.

RULE WITHOUT BASIS.

The petitioner lists a number of cases including *In re 48th Street Steakhouse, Inc.*, *In re Atlantic Business and Community Corp.*, *In re Turbowind, Inc.*, *Matter of Marcott*, 30 B.R. 633 (Bankr. W.D. Wis. 1983),[1] and *In re Convenient Food Mart No. 144, Inc.*, 968 F.2d 592 (6th Cir. 1992), for the proposition that a mere possessory interest in real property without any accompanying legal interest is sufficient to trigger the protection of the automatic stay.

What all these cases have in common is that none of them establish this legal principle based on independent legal reasoning. All of them cite backwards to the same source.

All of these cases rely on the ruling in *48th Street Steakhouse, Inc.* In turn, *48th Street Steakhouse, Inc.* relies on the ruling in the matter of *In re Onio's Italiana Restaurant Corp.*, 42 B.R. 319 (Bankr. 1984), which states at page 320 that "On the issuance of the warrant, the tenant has no legal interest in the property. He does have an equitable interest based upon possession." *Matter of GSVC Restaurant Corp.*, 3 B.R. 491, 494 (Bankr. S.D.N.Y.), *aff'd*, 10 BR. 300 (D.C.S.D.N.Y. 1980).

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1. *Matter of Marcott* and *In re Acorn Inv.*, 8 B.R. 506 (Bankr. S.D. Cal. 1981) also bases its decision on *Matter of Mimi's of Atlanta, Inc.*, 5 B.R. 623 (1980), which found a scintilla of equitable interest because state court eviction proceedings had begun but the writ had not issued when the bankruptcy was filed.

Again *Onio's* relies on an earlier decision for the rule it follows, stating no independent legal justification for this rule other than its use by an earlier court.

A review of all the cases cited by the Di Giorgios and all the legal authority relied on by those cases reveals that the very first instance of the supposed enunciation of this principle occurred in the case referred to in *Onio's Italiana Restaurant Corp.*, the *Matter of GSVC Restaurant Corp.*.

Turning to the *GSVC Restaurant Corp.*, and reviewing page 495, one quickly sees that the court made no such holding.

The court in *GSVC Restaurant Corp.* found that it was dealing with a debtor that

> has no legal interest in the property since "the issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises and annuls the relation of landlord and tenant." The debtor's sole interest in the property is predicated on its possession of the plaintiff's property in the face of a judicially ordered warrant of eviction. The debtor asserts that such possession constitutes an equitable interest deserving of protection under the automatic stay.

Id. at 494. (Citation omitted.)

The court did not adopt the assertion of the debtor, although it recognized "that equitable, interest in property is regarded as property of the estate," *Id.* at 494, it did not

rule that mere possession as described above actually constitutes an equitable interest, nor did it rule that it does not. Rather, in addressing the issue the court merely *assumed*, for the sake of argument, that possession is a sufficient nexus to invoke the stay. However, the court does not adopt that proposition as a legal and controlling principle, nor does the court apply that principle to the facts of the case.

On appeal, the United States District Court recognized that the bankruptcy judge had found no legal interest, and had made no finding of any equitable interest. *Id.*, *aff'd*, 10 B.R. 300, 309 (D.C. S.D.N.Y. 1980), and had merely assumed for the sake of argument the existence of the equitable interest in its analysis.

The District Court prophetically noted that "It would be very chaotic if every eviction proceeding could ultimately be frustrated by the last minute filing of a Chapter 11 proceeding in federal court." *Id.* at 302.

These cases should not be relied on by the Court.

CONCLUSION

Based on the foregoing, Lee was entitled to be placed in peaceable possession of the rental property by the petitioner without seeking relief from the Bankruptcy Court. Therefore, respondents respectfully request that the Court uphold the well reasoned decision of the California Court of Appeal and deny review in this matter.

Respectfully submitted,

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